IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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C.R. No.1940 of 1990
Date of Decision:28.04.2007

Sham Kumar Azad (died) through LRs, namely, (a) Smt. Rani Azad w/o Sh. Sham Kumar Azad (b) Arun Azad, (c)Deepak Azad, (d) Vishal Azad, sons of Sh. Sham Kumar Azad and (e) Pooja Rani, d/o Sh. Sham Kumar Azad r/o Jacobpura, Gurgaon

.....Petitioner

Vs.

Gopal Dass (died) through LRs and another

.....Respondents

CORAM:- HON'BLE MR. JUSTICE RAJESH BINDAL

Present:- Mr. Sachin Sood, Advocate for Mr. Arun Jain, Advocate for the petitioner.

Mr. R.K.Jain, Advocate for respondent No.1.

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Rajesh Bindal, J.

This is a petition by the landlord seeking eviction of respondent- tenant from the shop in dispute on the ground of the same having become unfit and unsafe for human habitation. Learned Rent Controller had accepted the petition filed by the petitioner whereas the appellate authority reversed the order passed by the Rent Controller. This is how the landlord is before this Court.

Briefly the facts, as noticed in the judgments of Courts below, are that the petitioner, being owner of shop bearing Municipal No.482/6 New (Old MC No.101/16) situated at old Railway Road, Gurgaon rented out the same to respondent No.1 at a monthly rent of Rs.55/-. The identification of the property was as per the site plan. On record in the site plan Ex.PW.5/A, the property was identified as under:

East: Other property of the petitioner now in dilapidated condition;

West: Other properties of the petitioner;

North: Other property of the petitioner;

South: Old Railway Road.

In the eviction petition, various grounds were taken, namely, non-payment of rent, change of user, subletting and the condition of the building having become dilapidated resulting into its being unfit and unsafe for human habitation. The eviction petition was contested by the respondents.

On the pleadings of the parties, the Rent Controller framed the following issues:-

"1) Whether the demised premises has become unfit for human habitation, as alleged? OPP.

2) Whether the respondent no.1 has sublet the shop to respondent no.2 as alleged? OPP.

3) Relief."

Considering pleadings, oral and documentary evidence on record, learned Rent Controller decided issue No.1 in favour of the petitioner and accordingly ordered eviction of respondent No.1 from the premises in dispute. Issue No.2 was decided in favour of respondent No.1 and against the petitioner. Aggrieved against the judgment of Rent Controller, respondent- tenant preferred an appeal. The appellate authority reversed the findings of the Rent Controller on the issue of the building having become unfit and unsafe for human habitation and resultantly ordered the dismissal of the eviction petition filed by the petitioner.

Assailing the judgment delivered by the appellate authority, learned counsel for the petitioner submitted that there is ample evidence on record to show that the building had, in fact, become unfit and unsafe for human habitation and while rejecting the plea of the petitioner, learned Additional District Judge- appellate authority has totally misread the material evidence on record. He has further submitted that a portion of the building adjoining the premises in dispute had already become unfit and unsafe, resultantly, the petitioner had to demolish the same. According to him, the report of the expert and oral evidence tendered by him could not be discarded in the manner, the same has been done by the lower appellate authority. As against this, reliance on the untrustworthy and unreliable evidence led by respondents has led to an error of judgment by the lower appellate Court. The expert witness relied upon by the respondents could

not withstand the test in cross-examination and resultantly the report submitted by him was liable to be discarded. He further submitted that the premises in question is a part of large building, major portion of which had become dilapidated. Resultantly, requiring demolition and the petitioner had already demolished the same. In this situation, respondent No.1 would be liable to be evicted even from the premises in dispute. He further submitted that even independent to this, the premises in dispute has become dilapidated and unfit and unsafe for human habitation which is evident not only from the report of the expert but also from a perusal of the photographs on record. It is admitted position on record that the building was constructed long ago in lime and mortar. The plaster had peeled off, the bricks had come out and in fact the building had outlived its life. He has further relied upon the judgments of this Court in **Bachh Raj Jain (Died) through LRs v. M/s C.R.Trading Co., 2002(2) RCR 417; Sudarshan Kumar v. Manoj Kumar and others, 2006(2) RCR 428** and **Ram Parkash v. Avinash Chander Sood, 2005(2) RCR 84.**

On the other hand, learned counsel for the respondent- tenant submitted that the plea regarding the adjoining part of the premises in dispute having become dilapidated and unfit and unsafe for human habitation cannot be taken by the petitioner as there were no pleadings to that effect in the petition filed by him and any evidence led in that regard would have to be discarded as the evidence could possibly be led only to substantiate the pleadings of the parties. Even otherwise, he submitted that the adjoining portion of the premises in dispute was demolished by the petitioner himself and he cannot take benefit thereof. Now new construction has been raised on both sides of the premises in dispute. Resultantly, even the present premises has become quite safe and sound. Still further it is submitted that the present eviction proceedings initiated by the petitioner were nothing else but a device to get rid of the respondent-tenant from the premises in dispute, as on earlier occasion also, the petitioner had tried to demolish the premises in dispute for which the respondent-tenant had to approach the Civil Court for seeking injunction. The report submitted by the expert witness cannot be relied upon as such to reject the defence raised by the respondent-tenant.

Having heard learned counsel for the parties and perusing the

record with their assistance, I find merit in the contention raised by learned counsel for the petitioner. It is not in dispute that the premises in question was let out to respondent No.1 vide rent note dated 22.6.1973 Ex.P-1 for running a motor cycle repair workshop. It has further been pointed out in the report of the expert witness produced by respondent No.1 that the premises in question was constructed in mud and with a plaster with lime mortar. The expert witness produced by the petitioner submitted that the building is quite old and has already outlived its age. The plaster has almost completely eroded and bricks show clear signs of weakness due to weathering effect. Mortar of the wall bricks has also come out at a number of places. Some cracks are also visible besides other signs of weakness in the building. In his cross-examination, the respondents could not bring out much to enable the Court to discard his report as totally false and frivolous. When RW5, Shri Y.D.Adlakha, the expert witness produced by the respondents, was put to cross-examination, he could not withstand the same and had to reply for a number of questions by stating that he had either not visited the site or had not seen the portions thereof, such as, that he did not go on the front of the shop, behind the shop, i.e., in the back side of the shop. He had not seen the eastern, western or northern sides of the walls. He further admitted that the plaster had peeled off at few places in the shop and such portion had been colour washed. The evidence led by the respondents in defence is falsified by a photograph placed on record by the respondents themselves as Ex.D.1 showing the position of the shop which is quite evident and in fact supports the plea raised by the petitioner. The front portion of the shop clearly show that the plaster had peeled off substantially and even the mortar from the bricks in the wall had also come out. It is further admitted position on record that the ceiling of the shop in question is made of wooden battons with brick tiles. The door windows openings were provided with same circular bricks archies in lime mortar. The dilapidated condition of the shop in question is further evident from photographs Ex.PW6/1 to Ex.PW6/3 on record which show not only the shop in question but also the area adjoining it.

In view of my above discussions, I find that the findings recorded by appellate authority to be perverse, accordingly, the same are reversed and it is held that the premises in dispute had become dilapidated

and unfit and unsafe for human habitation. The judgment of learned appellate authority is reversed and that of Rent Controller is restored.

The revision petition is disposed of.

April 28, 2007 **(RAJESH BINDAL)**
renu **JUDGE**